

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



[REDACTED]  
[REDACTED]  
September 29, 1994

SEP 30 1994

William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20036

Re: PR Docket No. 94-105

Dear Mr. Caton:

Please find enclosed for filing an original plus eleven copies of the EMERGENCY MOTION TO COMPEL PRODUCTION TO THE CALIFORNIA PUBLIC UTILITIES COMMISSION OF INFORMATION CONTAINED IN OPPOSITIONS TO CALIFORNIA'S PETITION TO RETAIN STATE REGULATORY AUTHORITY OVER INTRASTATE CELLULAR SERVICE RATES in the above-referenced proceeding.

Also enclosed is an additional copy of this document. Please file-stamp this copy and return it to me in the enclosed, self-addressed, postage pre-paid envelope.

Very truly yours,

Ellen S. Levine  
Principal Counsel

ESL:lkw

Enclosures

No. of Copies rec'd  
List ABCDE

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**ORIGINAL**

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

**RECEIVED**

SEP 30 1994

In the Matter of

DOCKET FILE COPY ORIGINAL

**FCC MAIL ROOM**

Petition of the People of the  
State of California and the  
Public Utilities Commission  
of the State of California  
to Retain Regulatory Authority  
over Intrastate Cellular Service

PR Docket No. 94-105

**EMERGENCY MOTION TO COMPEL PRODUCTION TO THE CALIFORNIA  
PUBLIC UTILITIES COMMISSION OF INFORMATION CONTAINED IN  
OPPOSITIONS TO CALIFORNIA'S PETITION TO RETAIN STATE  
REGULATORY AUTHORITY OVER INTRASTATE CELLULAR SERVICE RATES**

Pursuant to Section 1.41 of the Rules of Practice and Procedure of the Federal Communications Commission (FCC), the People of the State of California and the Public Utilities Commission of the State of California (CPUC) hereby request that the FCC compel AirTouch Communications (AirTouch) and the Cellular Telecommunications Industry Association (CTIA) to give the CPUC access to data, materials, and sources which underlie studies reviewed or relied upon by Dr. Jerry Hausman in affidavits attached to their oppositions to the CPUC petition. In support of its emergency motion, the CPUC declares as follows:

1. On August 8, 1994, the CPUC filed its petition in the above-referenced docket. In its petition, the CPUC found, based on substantial evidence, that cellular markets within California were not yet currently and sufficiently competitive to ensure just and reasonable rates for business and residential consumers of cellular service.

2. On September 19, 1994, AirTouch and CTIA, among others, filed an opposition to the CPUC petition.

3. Included in the opposition of AirTouch is an affidavit by Dr. Jerry Hausman. In his affidavit, Dr. Hausman relies on pricing data from the top 30 markets in the United States to support his claim that regulation in California has cost California consumers \$250 million in increased cellular rates.

4. On September 26, 1994, counsel for the CPUC sent by facsimile a data request to counsel for AirTouch. The data request is attached hereto as Appendix A. As indicated in that request, the CPUC has asked for access to the undisclosed pricing data reviewed or relied upon by Dr. Hausman in support of his claims.

5. In its opposition, CTIA also attaches an affidavit from Dr. Hausman. In this affidavit, Dr. Hausman indicates that he relied on the number of customers per carrier in order to assert that state regulation leads to lower levels of market penetration by cellular carriers. And, in addition to the undisclosed pricing data attached to his affidavit in support of AirTouch, in his affidavit in support of CTIA he relies on undisclosed historical pricing data from 1989-1993 broken down for the top 30 MSAs and RSAs. Based on this data, he claims that regulation in California has kept rates unduly high.

6. On September 26, 1994, counsel for the CPUC sent by facsimile a data request to counsel for CTIA asking for the undisclosed data reviewed or relied upon in support of Dr. Hausman's claims. The data request is attached hereto as Appendix B.

7. On September 28, 1994, counsel for AirTouch indicated that the data reviewed or relied upon by Dr. Hausman was obtained from public sources. Such information is not confidential and there is no work product privilege.

8. To date, neither AirTouch nor CTIA has provided the CPUC access to the undisclosed data underlying Dr. Hausman's affidavits.<sup>1</sup>

9. The CPUC has a legitimate interest in having timely access to all of the undisclosed underlying data and data sources reviewed or relied upon by Dr. Hausman in each of his affidavits in order to ascertain the specific database used, the accuracy of the data, and the validity of the interpretation of the data and the conclusions reached in his studies. Absent such timely access, the CPUC is denied a reasonable opportunity to rebut Dr. Hausman's claims.

10. Any publicly available data underlying Dr. Hausman's studies and the methodology used by Dr. Hausman in creating the studies must be made part of the record if the FCC intends to consider it in evaluating the CPUC petition. Nat'l. Black Media Coalition v. FCC, 791 F.2d 1016, 1023 (2d. Cir. 1986).

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1. Subsequent to the preparation of this motion, counsel for the CPUC received an oral representation from counsel for AirTouch that AirTouch would produce the information set forth in the CPUC's September 26 data request. Counsel for the CPUC, however, has not yet seen the letter from counsel for AirTouch confirming the terms and conditions under which the requested data will be provided nor has counsel seen the data itself. Upon its review, the CPUC may conclude that AirTouch has fully complied with the CPUC's data request, and hence this motion with respect to AirTouch may be moot. The CPUC, of course, reserves the right to reinstitute this motion with respect to AirTouch if AirTouch has not fully complied with the CPUC's data request.

11. To the extent in the CTIA affidavit that Dr. Hausman reviewed or relied upon data deemed commercially sensitive by cellular carriers, such data should be made available to the CPUC under reasonable terms and conditions contained in a protective order.


12. Inasmuch as the CPUC's reply to oppositions to its petition must be filed by the CPUC on October 18 (to be received by the FCC on October 19), the CPUC needs the data requested in its September 26 letters immediately.

WHEREFORE, the CPUC respectfully requests that the FCC compel AirTouch and CTIA to produce immediately to the CPUC all information set forth in the written CPUC's data requests of September 26, which information was reviewed or relied upon by Dr. Hausman on behalf of AirTouch and CTIA, in the manner set forth in such requests.

Respectfully submitted,

PETER ARTH, JR.  
EDWARD W. O'NEILL  
ELLEN S. LEVINE

By:

  
Ellen S. Levine

505 Van Ness Avenue  
San Francisco, CA 94102  
(415) 703-2047

Attorneys for the People  
of the State of California  
and the Public Utilities  
Commission of the State of  
California

September 29, 1994

A P P E N D I X      A

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



September 26, 1994

Via Fax

David A. Gross  
Kathleen Q. Abernathy  
Airtouch Communications  
1818 N Street, N.W., 8th Floor  
Washington, DC 20036

Dear Mr. Gross and Ms. Abernathy:

In the Affidavit of Professor Jerry A. Hausman which appears as Appendix E of the Opposition of Airtouch Communications to CPUC Petition to Rate Regulate California Cellular Service Professor Hausman includes an analysis and comparison of rates in the top 30 cellular markets. We would like the data which underlies this analysis.

Please send the entire data set used for the "1994 Price Regression for Top 30 Cellular Markets" found in Appendix I of the Affidavit of Professor Jerry A. Hausman. Specifically, this data should include:

1. 1994 price information for the cellular carriers in the top 30 markets. In addition to the price used in the regression analysis, include the major City in the market, the Metropolitan Statistical Area (MSA) number and the service providers. For each service provider, indicate the minimum bill, the monthly fee, the per minute peak and off-peak price, the free minutes categorized as unspecified, peak and off peak. (See the attached "Appendix B" from a previous Affidavit of Jerry A. Hausman in United States of America v. Western Electric Company, Inc., and American Telephone and Telegraph dated July 29, 1992.)
2. The sources for the 1994 price data included in the study.
3. The states in which the top 30 markets are located which regulate cellular rates and the source of this information, i.e. the "Regulation" dummy variable in the "1994 Price Regression for Top 30 Cellular Markets."
4. The per capita personal income, population and mean commute time from work used in the regression and the source for this data.
5. If in developing the regression analysis for the top 30 cellular markets, a larger data set was compiled (i.e. for all

MSAs or the top 60 MSAs), provide that data set, and answers to 1-4 above regarding that data.

6. State all assumptions in specifying this regression and any assumptions regarding the error disturbances.

Please provide the above data in printed form by Thursday, September 29, 1994 by facsimile to (415) 703-1965. If possible, please also send data in an ASCII text format either through electronic mail to [jol@cpuc.ca.gov](mailto:jol@cpuc.ca.gov) or on a 3.5 inch floppy disk. If you have any questions concerning this request, please contact either Brian Roberts at (415) 703-2334 or me at (415) 703-2047.

We look forward to your cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Ellen S. Levine".

Ellen S. LeVine

encl.



# 1991 CELLULAR SERVICE PRICES 30 LARGEST MSAs

City	Service Provider	MSA #	Minimum Bill	Monthly Fee	Per Minute Price		Free Minutes		
					Peak	Off-Peak	Unspecified	Peak	Off-Peak
New York	Metro One	1	\$113.60	\$32.00	\$0.55	\$0.35			
New York	NYNEX	1	124.60	35.00	0.60	0.40			
Los Angeles	Cellular One	2	111.24	45.00	0.45	0.27			
Los Angeles	PacTel Cellular	2	111.24	45.00	0.45	0.27			
Chicago	Cellular One	3	62.52	45.00	0.32	0.18	100		
Chicago	Ameritech	3	62.08	59.00	0.34	0.18	150		
Philadelphia	MetropHONE	4	105.16	9.95	0.55	0.35			
Philadelphia	Bell Atlantic	4	78.00	44.00	0.50	0.30		60	90
Detroit	Cellular One	5	69.35	14.95	0.34	0.34			
Detroit	Ameritech	5	67.76	50.00	0.33	0.16	100		
Boston	Cellular One	6	82.40	59.00	0.42	0.27	100		
Boston	NYNEX	6	91.20	44.00	0.52	0.37		60	
San Francisco	Cellular One	7	109.00	45.00	0.45	0.20			
San Francisco	GTE MobInet	7	103.50	39.50	0.45	0.20			
Washington	Cellular One (SWBell)	8	70.82	39.95	0.49	0.29		65	65
Washington	Bell Atlantic	8	73.00	39.00	0.50	0.30		60	60
Dallas	MetroCel Cellular	9	91.64	35.00	0.38	0.25			
Dallas	Southwestern Bell	9	98.59	49.95	0.38	0.00			
Houston	Houston Cellular Tel Co	10	80.06	35.00	0.31	0.16			
Houston	GTE Mobile Comms	10	79.80	35.00	0.31	0.16			
St. Louis	CyberTel Cellular	11	84.47	40.95	0.34	0.22			300
St. Louis	Ameritech	11	74.56	24.00	0.34	0.22			
Miami	Cellular One	12	99.20	40.00	0.39	0.29			
Miami	BellSouth	12	81.48	35.00	0.39	0.10	20		
Pittsburgh	Cellular One	13	83.59	26.95	0.38	0.25			
Pittsburgh	Bell Atlantic	13	86.15	26.95	0.37	0.37			
Baltimore	Cellular One (SWBell)	14	70.82	39.95	0.49	0.29		65	65
Baltimore	Bell Atlantic	14	73.00	39.00	0.50	0.30		60	60
Minneapolis	Cellular One	15	77.19	26.95	0.36	0.13			
Minneapolis	USWest Cellular	15	79.47	19.95	0.44	0.10			
Cleveland	Cellular One	16	77.65	55.95	0.34	0.19	90		
Cleveland	GTE MobInet	16	46.48	30.00	0.36	0.20		100	
Atlanta	PacTel Cellular	17	86.84	35.00	0.35	0.22			
Atlanta	BellSouth	17	87.80	35.00	0.35	0.25			
San Diego	USWest Cellular	18	92.60	35.00	0.40	0.20			
San Diego	PacTel Cellular	18	92.60	35.00	0.40	0.20			
Denver	Cellular One	19	95.40	25.00	0.49	0.24			
Denver	USWest Cellular	19	97.07	19.95	0.54	0.25			
Seattle	Cellular One	20	86.00	86.00	0.38	0.20	180		
Seattle	USWest Cellular	20	102.59	29.95	0.49	0.31			
Milwaukee	Cellular One	21	54.24	42.00	0.22	0.14	100		
Milwaukee	Ameritech	21	57.24	45.00	0.22	0.14	100		
Tampa	Cellular One	22	87.99	32.95	0.38	0.20			
Tampa	GTE MobInet	22	88.15	20.95	0.47	0.22			
Cincinnati	Cellular One	23	72.65	50.95	0.34	0.19	90		
Cincinnati	Car Fone Comms	23	72.60	54.00	0.34	0.19	100		
Kansas City	Cellular One	24	65.20	50.00	0.34	0.16	110		
Kansas City	Southwestern Bell	24	57.95	35.00	0.30	0.15	75		
Buffalo	Cellular One—Buf Tel Co	25	55.00	55.00	0.34	0.27	180		
Buffalo	NYNEX	25	66.20	15.00	0.34	0.24			
Phoenix	Metro Mobile	26	73.55	69.95	0.39	0.24	150		
Phoenix	USWest Cellular	26	85.55	19.95	0.45	0.25			
San Jose	Cellular One	27	109.00	45.00	0.45	0.20			
San Jose	GTE MobInet	27	103.50	39.50	0.45	0.20			
Indianapolis	Cellular One	28	51.79	15.95	0.24	0.16			
Indianapolis	GTE MobInet	28	66.08	20.00	0.32	0.16			
New Orleans	Radiofone	29	72.80	50.00	0.38	0.38	100		
New Orleans	BellSouth	29	72.80	50.00	0.38	0.38	100		
Portland	Cellular One	30	67.40	15.00	0.29	0.29			
Portland	GTE MobInet	30	61.00	33.00	0.31	0.16	60		

Note: Monthly bill is based on 160 minutes usage (128 minutes peak, 32 minutes off-peak).

A P P E N D I X B

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



September 26, 1994

Via Fax

Michael F. Altschul  
Vice President, General Counsel  
Cellular Telecommunications Industry Association  
1250 Connecticut Avenue, NW, Suite 200  
Washington, DC 20036

Dear Mr. Altschul:

In the Affidavit of Professor Jerry A. Hausman which appears as an attachment to Opposition of the Cellular Telecommunications Industry Association, Professor Hausman includes an analysis and comparison of rates in the top 30 cellular markets and for Rural Statistical Areas (RSAs). We would like the data which underlies this analysis.

Please send the entire data set used for the "1994 Price Regression for Top 30 Cellular Markets" found in Appendix 1, "1989-1993 Price Regression for Top 30 Cellular Markets" found in Appendix 2, "1989-1993 Price Regression for RSA Cellular Markets" found in Appendix 3 and "1989-1993 Demand Regression for Top 30 Cellular Markets" found in Appendix 4 of the Affidavit of Professor Jerry A. Hausman. Specifically, this data should include:

1. 1989 through 1994 price information for the cellular carriers in the top 30 markets and RSAs. In addition to the price used in the regression analysis, include the major City in the market, the MSA number and the service providers. For each service provider, indicate the minimum bill, the monthly fee, the per minute peak and off-peak price, the free minutes categorized as unspecified, peak and off peak.
2. The source of the 1989 through 1994 price data included in the study.
3. The states which regulate cellular rates and the source of this information, i.e. the "Regulation" dummy variable in the regressions.
4. The per capita personal income, population and mean commute time from work used in the regressions and the sources for this data.
5. The number of subscribers from 1989 to 1993 and the source for this data.

6. If in developing the regression analysis for the top 30 cellular markets, a larger data set was compiled (i.e., for all MSAs or the top 60 MSAs), please provide that data set and answers to items 1 through 5 above regarding that data set.

7. Please state all assumptions in specifying this regression and all assumptions regarding the error disturbances.

Please provide the above data in printed form by Thursday, September 29, 1994 by facsimile to (415) 703-1965. If possible, also send data in an ASCII text format either through electronic mail to [jol@cpuc.ca.gov](mailto:jol@cpuc.ca.gov) or on a 3.5 inch floppy disk. We will arrange to keep subscriber count data confidential, if this is considered necessary. If you have any questions concerning this request, please contact Brian Roberts at (415) 703-2334 or me at (415) 703-2047.

We look forward to your cooperation in this matter.

Sincerely,



Ellen S. LeVine  
Attorney for California Public Utilities Commission


cc: Jerry A. Hausman  
Massachusetts Institute of Technology  
Department of Economics  
Building E52-271A  
Cambridge, MA 02139

CERTIFICATE OF SERVICE

I, Ellen S. LeVine, hereby certify that on this 29th day of September, 1994 a true and correct copy of the foregoing document was mailed first class, postage prepaid to:

Michael F. Altschul  
Vice President, General Counsel  
Cellular Telecommunications  
Industry Association  
1250 Connecticut Avenue, NW, Suite 200  
Washington, DC 20036

Mary B. Cranston  
Pillsbury Madison & Sutro  
P.O. Box 7880  
San Francisco, CA 94120-7880

  
\_\_\_\_\_  
Ellen S. LeVine